The Case of Reginald Tucker, Defendant,

At the Prosecution of *William Hall* Esq; Counsellor at Law, but in the Name of his Majesty.

1685. *REGINALD TUCKER* being charged with High Treason, for being with the late Duke of *Monmouth* in the West; one Sir *Theophilus Oglethorp*, before he was Convicted, obtained from the late King *James* a private Grant of all his Estate, Real and Personal, which might occasion the Prosecution against his Life to be the more Violent.

Octob. 1685. The Defendant absconding himself in the County of *Somerset*, sent up his Wife to *London*, to solicit for his Pardon before he was taken: But one *Vaughan* by contrivance, insinuating himself into her Company, perswaded her to marry him; which he told her she might lawfully do, tho her Husband was still alive, in regard he being guilty of High Treason, was a dead Person in Law: And this Defendant's Wife being prevailed on, by the Artifices of *Vaughan* and his Confederates, was actually married to the said *Vaughan*; by which means the Defendant was disappointed of getting his Pardon, and she died in great Contrition.

Mr. *Hall* knowing this Defendant to be charged in K. *James*'s Proclamation with High Treason, contriv'd how to get his Estate; and in order thereunto first procur'd the Assignment of a Mortgage on part of this Defendant's Estate.

Aug. 1686. The Defendant coming up to *London* in order to go for *Holland*, was taken and carried to *Newgate*: Mr. *Hall* having notice of it, came to him, which was the first time this Defendant ever saw him, and pretended to get this Defendant's Pardon, but intended rather to get his Estate; and in order thereunto, soon after procured the Assignment of another Mortgage, that was on another Part of this Defendant's Estate, the better to screw himself by degrees into the Whole.

21 *March*, 1686. This Defendant having been some time before removed from *Newgate* to *Wells* in *Somersetshire*, was there tried for High Treason, and condemned to die.

July 1688. Mr. *Hall* taking Advantage of the miserable Condition of this Defendant, having gotten hold of Part, and designing to swallow up the rest of his Estate, came from *London* with one *John Barnard* an Attorney, to the Defendant then in *Somersetshire*, and mightily pressed him to release his Claim to his Estate, promising him a great Place at *Whitehall*. But this Defendant's Estate being lawfully descended to him from his Ancestors, and having Children of his own, he refused to comply, and begg'd Mr. *Hall* not to meddle with his Estate, telling him, he was resolv'd never to part with his Right, thô to save his Life. And this Defendant told him further, that if he should get it in this manner, it would never prosper with him: Upon which Mr. *Hall* was angry, and threatned it should fare the worse with this Defendant. And thô the Defendant had declared he would not part with his Right, yet Mr. *Hall* went on with his Design, and gave Sir *Theophilus* about 600 *l.* for this Defendant's Estate, which was really worth above 6000 *l.* including the two Mortgages.

According to the said Threats, it did fare the worse with this Defendant; for thereupon Sir *Theophilus* wrote a Letter to the Defendant, acquainting him, that if he did not confirm Mr. *Hall*'s Purchase, he should certainly be hang'd. And *William Penn* who procured this Defendant's Reprieve during Pleasure, wrote another Letter to him, that if he did not comply with Mr. *Hall*, it was supposed King *James* would be prevailed on to give order for his Execution, Mr. *Hall* intending to fright this Defendant, either out of his Life or Estate: But the Defendant, notwithstanding he was kept by Mr. *Hall*'s Contrivance under the continual Apprehensions of Death to terrify him into a Compliance, still refused to part with his Estate: Whereupon he was kept closer Prisoner than before, and endured greater Hardships than ever; and remained under those Severities and frequent Menaces of being hang'd, till his present Majesty landed in the West, at which time he was delivered out of Goal.

During all this time the Defendant and his Family were under the utmost extremity of Want: Mr. *Hall* who all along received the Profits of the Defendant's Estate, thô often applied to, yet could not be prevail'd upon to contribute one Farthing towards their Relief, insomuch that his poor Children must have been starved, had they not been maintained, as they were, by the Alms of the Parish of *Long-Sutton*, where part of the Defendant's Estate lay.

1689. The Defendant being advised to bring a Writ of Error to reverse his Attainder as the most proper Remedy, in order thereunto he diligently searched for the Record of his Attainder in the Crown-Office, that he might get a Copy thereof; but the same was not then filed upon Record in the Court as it ought to have been, but was kept privately in Mr. *Hall*'s Custody. At last it was brought into the Office, and filed in *June* 1689, and not before, which was between two and three Years after the Conviction, which this Defendant is advised to be a very foul practice. Having at last procured a Copy of the Record, he was advised by his Counsel, there were above twenty manifest Errors therein; one of which was, that the Judgment was not awarded in the Form the Law directs in Cases of High Treason, for the *cutting off the Privy Members* was omitted. Another Error was, that the Indictment did not conclude as it ought by Law, these words, *against the Duty of his Allegiance*, being omitted; besides several other manifest Errors, too long to be here inserted.

1690. The Defendant prosecuted a Writ of Error, in order to reverse the said Attainder; which was directed to the Judges of the *Kings-Bench*, but he at that time being in a very low Condition, and having been too sensible of the Strength of his Adversaries, durst not stir in it till *Michelmas* Term 1692. And then being encouraged by the promised Assistance of some Friends, he resolved to proceed; and in *Hilary* Term 1692, 1693. several of the said Errors were argued by his Counsel at the Kings-Bench Bar: And the next Term after (*viz.*) in *Easter* Term 1693. the whole Court was of Opinion the Attainder ought to be reversed.

But the next Day Mr. *Hall* moved the Court to have the same argued again: Upon which the Errors in the said Record were again argued by 1694. Counsel on both sides, for four Terms more successively, that the Matter might be the more throughly considered; and in *Easter* Term 1694, all the four Judges of that Court, after a long examination of several Records and Precedents, and after mature deliberation, gave their solemn Opinions in Court, one after another, *seriatim*, that the Attainder should be reversed, and that the Defendant should be restored to all that he had lost thereby; and each of the Judges gave severally the Reasons of their Opinion in open Court.

It is alledged, that the Defendant made a Mortgage of part of his Estate by the Name of Son and Heir, he being but the younger Son. To which 'tis answered, his Father settled the Estate on the Defendant and his Heirs for ever; and the Defendant kept his elder Brother many Years at his Dwellings in *London* and in the Country, who died a Lunatick and a Batchelor before the Defendant's Conviction.

It is pretended by Mr. *Hall*, that he purchased the King's Title for a valuable Consideration, and thereby preserved his Mortgages, and also secured the Defendant's Life. To this it may be answered, that he purchased a defeazable Title, and must run the same Hazard as the Purchaser of a mortgaged Estate does; for by the Reversal of the Attainder, the King's Title fails as much as the Purchaser's does in the other Case by the Entry of the Mortgagee: Then the Consideration cannot in strictness of Reason be said to be valuable, it being but 600 *l.* for an Interest worth 6000 *l.* and the Reason why Mr. *Hall* gave so small a Consideration for it, was, because of the Hazard he was to run in case the Attainder should be reversed, in regard the Defendant could not be perswaded to release his Claim.

Then the Mortgagees were never in danger by the King's Title; for the Lands, whether in the Hands of the King or Subject, must still be liable to the Mortgages, which were made precedent to the Attainder: and then how he saved the Defendant's Life, will appear from the Case above.

The Defendant finding an Inquisition of his Estate returned into the Exchequer, hath since sued out the *amoveas Manus*; so that now his Estate is out of the King's Hands.

The Defendant humbly prays your Lordships to affirm the Reversal of his Attainder, as well for the sake of Justice and Right, as in compassion to his Six poor Children.

Reginald Tucker's CASE:

To be heard at the Bar of the House of Lords, on Monday the 21st of January, 169⅔.